

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING
Rules I through IX, the amendment of)	ON PROPOSED ADOPTION,
ARM 37.81.104, 37.81.301, 37.81.304,)	AMENDMENT, AND REPEAL
37.81.307, 37.81.310, 37.81.318,)	
37.81.322, 37.81.338, 37.81.346, and)	
the repeal of ARM 37.81.9004,)	
37.81.9005, 37.81.9006, 37.81.9009,)	
and 37.81.9010 pertaining to the)	
Pharmacy Access Prescription Drug)	
Benefit Program (Big Sky Rx))	

TO: All Interested Persons

1. On April 4, 2008 at 10:30 a.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on March 24, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

RULE I MONTANA PHARMASSIST PROGRAM (1) The rules in this chapter implement the Prescription Drug Consumer Information and Technical Assistance Program established in 53-6-1006, MCA. This program is referred to in these rules as the Montana PharmAssist Program.

AUTH: 53-2-201, 53-6-1006, MCA

IMP: 53-2-201, 53-6-1006, MCA

RULE II RULE DEFINITIONS In addition to the definitions in 53-6-1001, MCA, the following definitions apply to this chapter:

(1) "Application" means the form developed by the department to provide the program with client specific information.

(2) "Authorized client" means an applicant has met all the Montana PharmAssist authorization criteria stated in [RULE V].

(3) "Chronic disease" means cardiovascular disease, chronic respiratory disease, diabetes mellitus, and geriatric issues.

(4) "Client inventory form" means a form developed by the department to include pertinent client and health information.

(5) "Continuing education (CE)" means an initial six-hour and annual two-hour CE program meeting the requirements of [RULE IX], created and instructed by the University of Montana, Skaggs School of Pharmacy, Department of Pharmacy and accredited by the American Council on Pharmaceutical Education (ACPE).

(6) "Credentialed pharmacist" means a Montana licensed pharmacist in good standing who has completed the required continuing education and has a current personal service contract with the department.

(7) "Department" means the Department of Public Health and Human Services.

(8) "Eligible client" means an applicant has met all the Montana PharmAssist eligibility criteria stated in [RULE V].

(9) "First in first served" means completed applications will be processed and eligible applicants will be referred to a pharmacist for services based upon the date received.

(10) "Personal service contract" means the contract between the department and the credentialed pharmacist.

(11) "PharmAssist patient packet" means an application, a signed Acknowledgement of Receipt of Notice of Privacy Practices, and a Client Inventory Form.

(12) "Qualified" means an applicant has met all the Montana PharmAssist qualification criteria stated in [RULE V].

(13) "Residing" means living in Montana voluntarily with the intention of making a home in the state and not for a temporary purpose.

AUTH: 53-2-201, 53-6-1006, MCA

IMP: 53-2-201, 53-6-1006, MCA

RULE III MONTANA PHARMASSIST SCOPE AND PURPOSE

(1) Beginning July 15, 2007, Montana residents may request applications for referral to a credentialed pharmacist for review of their medication regimens to address medication cost and the proper and prudent use of their medications. Clients who have applied and whose personal circumstances warrant a referral will be referred to a pharmacist for a drug regimen review and face-to-face interactions to identify therapeutic duplications and possible cost saving alternatives. The pharmacist will schedule and perform a face-to-face consultation and provide recommendations for the client to discuss with their prescriber. Upon completion, the client, their prescribers, and department representatives will receive a letter prepared by the pharmacist outlining the face-to-face discussion. The letter will include the pharmacist's recommendations for the possible alternatives available for the client. Clients are encouraged to discuss the pharmacist's recommendations with their prescribers prior to making any changes.

AUTH: 53-2-201, 53-6-1006, MCA

IMP: 53-2-201, 53-6-1006, MCA

RULE IV AMOUNT OF PHARMASSIST BENEFIT (1) If eligible for Montana PharmAssist, a client may receive up to \$200 of pharmacist services per 12 month period as outlined in the pharmacist's Personal Service Contract. Services will include an initial face-to-face consultation and may include follow-up services if warranted and approved by the department or its designee. All expenditures are contingent on available appropriations.

AUTH: 53-2-201, 53-6-1006, MCA

IMP: 53-2-201, 53-6-1006, MCA

RULE V ELIGIBILITY FOR MONTANA PHARMASSIST (1) An applicant must be qualified, eligible, and authorized to receive pharmacist services.

(2) To qualify, an applicant must have a chronic disease and either:

(a) take four or more medications; or

(b) have a condition or health issue determined by the screening pharmacist that provides an opportunity for benefit.

(3) To be eligible, an applicant must be residing in the state of Montana.

(4) To be authorized, an applicant must submit a completed PharmAssist Patient Packet, to include:

(a) an application;

(b) a signed Acknowledgement of Receipt of Notice of Privacy Practices; and

(c) a Client Inventory Form.

AUTH: 53-2-201, 53-6-1006, MCA

IMP: 53-2-201, 53-6-1006, MCA

RULE VI PROCESSING MONTANA PHARMASSIST APPLICATIONS

(1) The department or its designee will process PharmAssist Patient Packets on a first in first served basis using the date the complete package is received.

(2) Authorized clients will be referred to a pharmacist for services.

(3) Applicants failing to meet criteria defined in [RULE V] will be notified in writing.

AUTH: 53-2-201, 53-6-1006, MCA

IMP: 53-2-201, 53-6-1006, MCA

RULE VII MAINTENANCE OF A WAITING LIST FOR THOSE DETERMINED ELIGIBLE FOR MONTANA PHARMASSIST (1) The department will process PharmAssist Patient Packets and notify eligible individuals in writing if no available program slot exists, either due to lack of appropriations or credentialed pharmacists in their region.

(2) Eligible individuals will have their names maintained on a waiting list until program slots become available.

(3) When program slots become available, clients will be referred to a credentialed pharmacist for services on a first in first served basis.

AUTH: 53-2-201, 53-6-1006, MCA
IMP: 53-2-201, 53-6-1006, MCA

RULE VIII MONTANA PHARMASSIST GRIEVANCE AND APPEAL PROCEDURES (1) All decisions of the department related to the administration of the Montana PharmAssist are reviewable using the procedures in ARM 37.5.101, 37.5.304, 37.5.307, 37.5.313, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, and 37.5.334.

(2) An aggrieved applicant may request a fair hearing in writing within 90 days. The request must be mailed to the Department of Public Health and Human Services, Quality Assurance Division, Office of Fair Hearings, P.O. Box 202953, Helena, MT 59620-2953.

(3) If a written request for hearing is received by the department more than 90 days after the mailing date of a notice of denial, the hearing officer must deny a hearing as provided in ARM 37.5.313.

AUTH: 53-2-201, 53-6-1006, MCA
IMP: 53-2-201, 53-6-1006, MCA

RULE IX MONTANA PHARMASSIST, CONTINUING EDUCATION

(1) The CE program will consist of an overview of the Montana PharmAssist Program and completion of program paperwork, instruction on documentation and communication of the patient care plan, and review of treatment guidelines and drug interactions for four therapeutic topics (cardiovascular diseases, chronic respiratory diseases, diabetes mellitus, and geriatric issues). In addition, the CE program will provide hands-on experience in reviewing patient medication profiles.

AUTH: 53-2-201, 53-6-1006, MCA
IMP: 53-2-201, 53-6-1006, MCA

4. The rules as proposed to be amended provide as follows. New matter is underlined. Matter to be deleted is interlined.

37.81.104 DEFINITIONS In addition to the definitions in 53-6-1001, MCA, the following definitions apply to this chapter:

(1) through (8) remain the same.

(9) "Eligibility threshold" means Big Sky Rx pProgram income up to 200% of FPL.

(10) through (26) remain the same.

(27) "Program" means the Big Sky Rx pProgram administered by the department.

(28) through (31) remain the same.

(32) "Temporary enrollment" means the three month enrollment allowed for those applicants that are only missing Social Security Extra Help determination.

~~(32)~~ (33) "Unearned income" means any income other than salary, wages, and earnings from self-employment.

~~(33)~~ (34) "Waiting list" means the list compiled by the department of applicants who are eligible for premium assistance but who are not enrolled in the Big Sky Rx ~~p~~Program because funds are not available to pay their program benefits.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.301 BIG SKY RX SCOPE AND PURPOSE (1) ~~Beginning On~~ January 1, 2006, Medicare Prescription Drug Plans (PDPs) ~~will be~~ became available to people with Medicare. This is a voluntary federal program created by the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA) 42 USC 1302, 1395w-101 through 1395w-152, and 1395hh. It is referred to as "Medicare Part D" in these rules and implemented in 42 CFR ~~P~~part 423.

(2) remains the same.

(3) The purpose of Montana's Big Sky Rx ~~p~~Program is to pay a portion or all of the cost of the PDP premium for eligible Montana residents.

(4) and (5) remain the same.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.304 AMOUNT OF THE BIG SKY RX BENEFIT (1) remains the same.

(a) If a portion of the applicant's PDP premium is paid through the Extra Help ~~p~~Program, the Big Sky Rx ~~p~~Program will pay the applicant's portion of the PDP premium up to \$33.11 per month.

(b) Big Sky Rx does not pay for the cost of an enrollee's drugs or the cost of an enrollee's deductible, coinsurance, or copayments.

(c) All expenditures are contingent on legislative appropriation. The amount of the monthly benefit, \$33.11, ~~is determined based on the maximum Extra Help benefit. This amount~~ extends the Social Security Extra Help benefit amount to Montana residents with income up to 200% FPL. The department's total expenditure for the program will be based on appropriation and the number of enrolled applicants.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.307 ELIGIBILITY FOR BIG SKY RX (1) through (2)(b) remain the same.

~~(3) If a qualified applicant's income is at or below 150% of FPL and the applicant has assets of less than \$11,500 for a single person and \$23,000 if married and living together, then the applicant must provide a determination from Social Security Extra Help. An applicant who meets the eligibility requirements for Social Security Extra Help as outlined in 42 CFR 423.773 (2007), which is adopted and incorporated by reference, must provide a determination from Social Security Extra Help.~~

(4) An individual who is receiving benefits for Medicaid is not eligible for the

Big Sky Rx pProgram.

(5) through (7) remain the same.

(8) Program enrollment and eligibility terminates will terminate at the end of the month in which ~~for~~ any of the following events occur:

(a) the enrollee becomes Medicaid eligible;

(b) by ~~eligibility~~ income verification, the enrollee's income is found to exceed 200% of the FPL;

(c) remains the same.

(d) the enrollee did not provide an ~~eExtra hHelp~~ determination, if appropriate, or reapply for ~~eExtra hHelp~~;

(e) through (g) remain the same.

(9) Termination of the benefit amount will be effective at the end of the month ~~that and a notice of termination is given~~ will be mailed to the enrollee.

(10) remains the same.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.310 INCOME AND FAMILY SIZE CRITERIA FOR BIG SKY RX

(1) and (2) remain the same.

(3) Unearned income includes Social Security benefits, veterans benefits, railroad benefits, public and private pensions, annuities, workers' compensation, alimony, child support, unemployment, income from a trust, net rental income, dividends, interest, and inheritances.

(4) through (7) remain the same.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.318 PROCESSING BIG SKY RX PARTICIPANT APPLICATIONS

(1) through (1)(b) remain the same.

(2) Applications will be processed by the department and individuals will be notified in writing of their eligibility status as:

(a) through (d) remain the same.

(e) eligible and on the waiting list for the Big Sky Rx pProgram.

(3) A completed application consists of:

(a) a signed Big Sky Rx application form with the following information:

(i) through (vi) remain the same.

~~(vii) street address;~~

~~(viii) (vii) mailing address;~~

~~(ix) (viii) family size;~~

~~(x) (ix) family income;~~

~~(xi) (x) gross wages;~~

~~(xii) (xi) family assets;~~

~~(xiii) (xii) in-kind support;~~

~~(xiv) (xiii) disability or blind related work expense;~~

~~(xv) (xiv) name of applicants' PDP; and~~

~~(xvi)~~ (xv) payment option of direct deposit or mail if applicant wishes to be paid directly.

(4) and (5) remain the same.

(6) An applicant who meets the eligibility requirements for Social Security Extra Help and is missing no other program requirement will receive a three month temporary enrollment. Within three months a temporary enrollee must provide documentation of a Social Security Extra Help determination, if the applicant has family income at or below 150% FPL and assets of less than \$11,500 if single or \$23,000 if married and living together. If no documentation is provided, the temporary enrollee will be disenrolled.

(7) and (8) remain the same.

(9) Qualified but incomplete applications will be marked "pending" until the applicant provides the PDP information ~~and, if appropriate, the Social Security Extra Help determination~~ and any missing application material.

(a) The applicant will be ~~notified~~ mailed a notice that the application is pending. The application will be held for 60 ~~business~~ days from the ~~date of the notice~~ application date. Following the 61st ~~business~~ day, a notice will be ~~sent~~ mailed to the applicant as a reminder of the missing information.

(b) The application will remain "pending" until the information can be processed. If the information is still missing on the 91st ~~business~~ day following the ~~original notice~~ application date, the department will consider the applicant ineligible and the individual will be ~~notified~~ mailed a notice. The department will take no further action.

(10) Incomplete applications that are not otherwise qualified are considered "pending" by the department. These individuals will be ~~notified~~ mailed a notice of the missing information.

(a) A pending application will be held for 30 ~~business~~ days waiting for missing information. If the missing information is received within the 30 ~~business~~ days from the ~~date of the notice~~ application date, the application will be processed.

(b) Following the 31st ~~business~~ day the department will consider the application incomplete. The applicant becomes ineligible, and will be ~~notified~~ mailed a notice. The department will take no further action.

(11) remains the same.

(12) Program enrollment starts the first day of the following month. Enrollees will be ~~sent~~ mailed an enrolled notice, including the approved premium benefit amount. The premium benefit amount will be paid to the PDP or the individual for the following month.

(13) If no premium assistance is available because of funding, eligible individuals will be placed on the department's waiting list. If funds become available, a notice will be ~~sent~~ mailed and the applicant will be enrolled.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.322 BIG SKY RX APPLICATION RENEWAL (1) Sixty days prior to the end of the 12-month eligibility period, a prepopulated notice will automatically be generated and ~~sent~~ mailed to the client. This notice is generated based on the

eligibility enrollment determination date.

(2) through (2)(b) remain the same.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.338 VERIFICATION OF ELIGIBILITY FOR BIG SKY RX (1) remains the same.

(2) An individual will have ~~20 business~~ 30 days from the date of the written request by the department to submit the required income documentation. The client will remain enrolled during the verification process.

(a) If the required documentation is not received by the department after ~~20~~ 30 days, the enrolled individual will be disenrolled from the program the following month.

(b) An individual who provides income verification documentation after ~~21 business~~ 30 days will have the application reprocessed as if it is a new application.

(3) through (4)(h) remain the same.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.346 BIG SKY RX PDP CONTRACTS MEMORANDUM OF UNDERSTANDING (MOU) AND BUSINESS ASSOCIATES AGREEMENT (BAA)

(1) An insurer receiving direct payment of all or part of a PDP premium from the state on behalf of an enrollee must enter into a ~~contract~~ Memorandum of Understanding (MOU) and Business Associates Agreement (BAA) with the department.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

5. The rules as proposed to be repealed provide as follows:

37.81.9004 APPLICATION FOR MEDICARE PART D LOW INCOME PREMIUM AND COST SHARING SUBSIDIES (LIS), is found on page 37-18231 of the Administrative Rules of Montana.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.81.9005 PROCESSING OF APPLICATIONS FOR LIS, is found on page 37-1832 of the Administrative Rules of Montana.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.81.9006 EFFECTIVE DATE OF ELIGIBILITY FOR LIS, is found on page

37-18233 of the Administrative Rules of Montana.

AUTH: 53-2-201, MCA
IMP: 53-2-201, MCA

37.81.9009 REDETERMINATIONS OF ELIGIBILITY FOR LIS, is found on page 37-18237 of the Administrative Rules of Montana.

AUTH: 53-2-201, MCA
IMP: 53-2-201, MCA

37.81.9010 APPEAL PROCESS FOR LIS APPLICATIONS, is found on page 37-18238 of the Administrative Rules of Montana.

AUTH: 53-2-201, MCA
IMP: 53-2-201, MCA

6. The 2005 Montana Legislature enacted 2005 Laws of Montana Chapter 287 that provided a program to offer all Montana citizens an avenue to investigate ways of controlling medication costs and at the same time derive additional health benefits from proper and prudent use of medications. The department is proposing this program be called the "PharmAssist Program".

The PharmAssist Program will include a consultation by a licensed pharmacist with an individual on how to avoid dangerous drug interactions and provide for substitution of more cost-effective drugs with approval by the prescribing health care professional.

The department estimates the program will serve approximately 50 to 100 persons monthly. The program has budgeted \$317,000 annually for this service including development and delivery of continuing education requirements to pharmacists and delivery of services to eligible persons.

Since the program was mandated by statute, the department did not consider alternative means of achieving the same result.

RULE I

This rule is necessary to identify the program implemented in these new rules as outlined in 2005 Laws of Montana Chapter 287.

RULE II

This rule defines words and phrases that are not defined in statute but are used extensively in these rules.

RULE III

This rule is necessary to explain the scope and purpose of the PharmAssist Program. The purpose of the state program is to provide face to face consultations with a pharmacist to individuals who are taking multiple drugs so they may avoid dangerous drug interactions and to provide for substitution of more cost-effective drugs with approval by the prescribing health care professional.

RULE IV

This rule proposes that an eligible applicant may receive up to \$200 of pharmacist services per 12 month period. These services will include an initial face-to-face consultation and may include follow-up services, if warranted and approved by the department or its designee.

RULE V

This rule proposes the eligibility requirements for PharmAssist. To receive services an applicant must be qualified, eligible, and authorized. An applicant, to be qualified for services, must have a chronic disease and must be taking four or more medications or have a condition or health issue determined by the screening pharmacist that provides an opportunity for benefit. An applicant, to be eligible, must be residing in the state of Montana. An applicant to be authorized, must submit a completed PharmAssist Patient Packet including an application, a signed Acknowledgement of Receipt of Notice of Privacy Practices, a Client Inventory form, and then pass the department's screening criteria.

RULE VI

This rule is necessary to explain how the department will process PharmAssist Patient Packets. Each packet will be processed on a first in, first served basis using the date a complete package is received. Authorized clients will be referred to a pharmacist for services and unsuccessful applicants will be notified in writing.

RULE VII

This rule is necessary if the program receives applications from more qualified residents than there is funding available or if there are no credentialed pharmacists in their region. Successful applicants names would be placed on a waiting list until services became available.

RULE VIII

This rule is necessary to state the appeal process that will be available to applicants who are not satisfied with a program decision. The department will hear and resolve disputes using its fair hearing procedures, which conform to the requirements of the Montana Administrative Procedure Act.

RULE IX

This rule is necessary to identify and train Montana registered pharmacists, with licenses in good standing, about the Montana PharmAssist Program. Interested pharmacists are given an overview of the program, provided case studies for discussion, and introduced to the forms necessary for documentation of their consultation.

Big Sky Rx proposals

On January 1, 2006, Medicare Prescription Drug Plans (PDPs) became available to people with Medicare. This is a voluntary federal program created by the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA) 42 USC 1302, 1395w-101 through 1395w-152, and 1395hh. It is referred to as "Medicare Part D" in these and implemented in 42 CFR part 423. An individual entitled to benefits under Medicare Part A or enrolled in Medicare Part B is eligible to enroll in a Medicare Part D PDP. There is also a federal premium subsidy called "Social Security Extra Help" (SSEH) for some individuals that assists in paying copayments, deductibles, and premiums.

Montana's Big Sky Rx Program pays a portion of all of the cost of the PDP premium for eligible Montana residents. These rule changes are necessary to continue to coordinate the state program with the federal program.

ARM 37.81.301

The proposed amendment to this rule is to improve readability. It is intended to have no substantive effect.

ARM 37.81.304

The current rule states the maximum monthly Big Sky Rx premium benefit amount for each enrollee is determined by the maximum Social Security Extra Help benefit (SSEH). The Big Sky Rx Program will no longer use the federal program as the measure of state benefits. The SSEH maximum benefit is determined by CMS's regional benchmark. The regional benchmark varies from year to year. If the department changed the maximum monthly premium benefit from year to year it would create problems with system programming, program policies, and generate confusion for the beneficiaries.

ARM 37.81.307

This rule states the eligibility requirements for the program. In the current eligibility requirements the department specified the exact dollar amount for a qualified applicant's income and asset limits to determine if the applicant must apply for the Social Security Extra Help Program (SSEHP). These amounts can change from year to year. The department is proposing to change the wording to reference the

CFR that governs SSEHP. The department will either update the CFR reference periodically to the current CFR or will use the 2007 standards.

Edits to improve readability are also being proposed. They are not intended to have a substantive effect.

ARM 37.81.310

This rule states the income and family size criteria for the program. Child support and unemployment benefits were added to the list of unearned income types that could be used in determining eligibility for the program. These income types are currently being used to determine eligibility but were not stated in the current rule. Child support and unemployment benefits are included in the determination of eligibility because the funds received are a source of support that may reduce the need for Big Sky Rx benefits.

ARM 37.81.318

This rule states how the department processes a Big Sky Rx application when received. The department no longer requires a street address on the application. This caused confusion to the applicants and is not necessary for the department to determine whether the applicant is qualified for the program.

The change of business days to calendar days is proposed for administrative efficiency because the Big Sky Rx's eligibility computer system uses calendar days and not business days to calculate time.

The department is proposing a new enrollment type, three month temporary enrollment, for those applicants who qualified for the program, but also met the requirements for the Social Security Extra Help (SSEHP). Before this proposed rule change, individuals are placed in a pending status until they received their determination from Social Security. The department has found in the first two years of the program that these people generally would not apply for this extra help, even though it would be beneficial to them. Therefore, they would become ineligible for the Big Sky Rx Program and end up not receiving any of the much needed help. The department believes this program would assist and encourage applicants who would benefit most from the BSRx Program to fill out the SSEH application.

ARM 37.81.322

The department is proposing to change the word "sent" to "mailed" in this rule to improve readability. It is not intended to have a substantive effect since the department's practice has been to mail all notices required by these rules.

ARM 37.81.338

This rule governs verification of eligibility for the program. The department is

proposing to change 20 business days for the return of the documentation for verification of eligibility to 30 calendar days. This is approximately the same amount of time and is compatible with the program's computer system.

ARM 37.81.346

This rule states any prescription drug plan (PDP) that receives direct payment of all or part of a premium from the state on behalf of an enrollee must enter into a contract with the department. The proposed amendment would change the requirement to a Memorandum of Understanding and a Business Associates Agreement. The service a PDP is providing the state is verification of enrollees in exchange for the benefit received by the PDP. No money is exchanged; therefore, the Memorandum of Understanding is the PDP's preferred memorialization of the agreement and it meets the department's needs. A Business Associates Agreement is necessary for the exchange of protected health information (PHI) under privacy laws.

ARM 37.81.9004 through 37.81.9010

These rules state how the department should create its own version of the application. These administrative rules were adopted before the Extra Help or BSRx Programs were up and running. Given how the SSEHP functions presently, it is unnecessary for the department to duplicate services by creating a state version of the Extra Help form and determining eligibility for the federal program. These rules are being repealed.

7. The department intends these rules to be applied retroactively to July 1, 2007. There is no negative impact if these rules are applied retroactively.

8. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on April 10, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by letter dated September 21, 2007, sent postage prepaid via USPS.

11. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct the hearing.

/s/ John Koch
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State March 3, 2008.